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Oversight Review

February 16, 2010

Report on Review of Army Decision Not to  
Withhold Funds on the Logistics Civil  
Augmentation Program III Contract

Report No. D-2010-6-001

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## **Acronyms**

ASC	Army Sustainment Command
AMC	Army Materiel Command
AFARS	Army Federal Acquisition Regulation Supplement
DCAA	Defense Contract Audit Agency
DCMA	Defense Contract Management Agency
DFARS	Defense Federal Acquisition Regulation Supplement
FAR	Federal Acquisition Regulation
LOGCAP	Logistics Civil Augmentation Program
RCI	Resource Consultants, Inc.



INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
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February 16, 2010

MEMORANDUM FOR SECRETARY OF THE ARMY  
COMMANDER, ARMY MATERIEL COMMAND  
COMMANDER, ARMY SUSTAINMENT COMMAND

SUBJECT: Report on Review of Army Decision Not to Withhold Funds on the Logistics Civil Augmentation Program III Contract (Report No. D-2010-6-001)

We are providing this report for your review and comment. We performed this review in response to a request from the Senate Armed Services Committee dated December 12, 2008. We considered the management comments on a draft of this report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. The Army Materiel Command comments were partially responsive. We request additional comments to Finding A and Recommendations A.1., A.2., A.3., and B.1., by March 3, 2010.

Please provide comments that conform to the requirements of DoD Directive 7650.3. If possible, send management comments in electronic format (Adobe Acrobat file only) to the e-mail address cited in the last paragraph of this memorandum. Copies of the management comments must contain the actual signature of the authorizing official. We cannot accept the / Signed / symbol in place of the actual signature.

We appreciate the courtesies extended to the staff. Questions should be directed to Ms. Carolyn R. Davis at (703) 604-8877 (DSN 664-8877), carolyn.davis@dodig.mil.

Charles W. Beardall  
Deputy Inspector General  
for Policy and Oversight

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# Review of Army Decision Not to Withhold Funds on the Logistics Civil Augmentation Program III Contract

## Results In Brief

### What We Did

We conducted this review in response to a Senate Armed Services Committee request involving the Army's decision not to withhold funds on the Logistics Civil Augmentation Program (LOGCAP) III contract.

### What We Found

Two Commanding Generals of the Army Sustainment Command directed a contracting officer to postpone the withholding of funds on the LOGCAP III contract in noncompliance with the Federal Acquisition Regulation. The decision to postpone the withholding of funds was influenced by contractor claims that the withholding might adversely impact their ability to provide vital support services to the troops. The Army Sustainment Command request for a deviation from the Federal Acquisition Regulation did not include all relevant facts necessary for the approving official to make an informed decision. In the deviation request, the Army also could not support its claim that it had considered alternatives in obtaining the LOGCAP III services. While the timing of two employee reassignments raised the possibility that they could have been related to the individuals' efforts on the 15 percent withhold issue, we did not find sufficient evidence to substantiate that those efforts were the basis for their reassignments.

### What We Recommended

We recommended that the Commanding General of the Army Materiel Command develop quality assurance procedures for requesting Federal Acquisition Regulation deviations and for developing contingency plans associated with the continuation of essential DoD contractor services. The Army Materiel Command should take corrective actions for the unauthorized decision not to enforce Federal Acquisition clause 52.216-26, *Payments of Allowable Costs Before Definitization*. The Commanding General of the Army Sustainment Command should implement quality assurance procedures for ensuring compliance with all contract clauses, and should improve its policies and procedures for reassigning employees.

### Management Comments

The Army Materiel Command partially concurred with Finding A and four of five related recommendations. The Army Materiel Command was not required to respond to Finding B. We request that the Army Materiel Command reconsider its nonconcurrences. We also request that the Army Materiel Command reconsider its response to Recommendation A.2., because the proposed corrective action was not responsive. We request additional comments to Finding A and Recommendations A.1., A.2., A.3., and B.1., by March 3, 2010.

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# Introduction

## Objective

In response to a Senate Armed Services Committee request dated December 12, 2008, we reviewed the Army's decision not to withhold funds on undefinitized task orders under the Logistics Civil Augmentation Program (LOGCAP) III contract, as Federal Acquisition Regulation (FAR) clause 52.216-26 requires. We focused our review on the following five questions raised in the review request:

1. Were Army contracting officials responsible for the LOGCAP contract in August 2004 directed by their chain of command to reverse a decision to withhold funds from a DoD contractor because the contractor failed to provide data needed to substantiate contract costs?
2. Did anyone in the Army chain of command discuss the withhold issue with contractor officials in August 2004, and did any such discussions influence the Army's position on withholding funds from the contractor?
3. Was the Army's decision not to withhold funds from the contractor in August 2004 consistent with the requirements of the FAR?
4. Was the removal of Army contracting officials responsible for the LOGCAP contract in August 2004 the result of the contracting officials' efforts to withhold funds from the contractor?
5. Were Army officials that the Senate Armed Services Committee staff interviewed truthful in their description of these events?

We also performed a preliminary review of the Army's contract with Resource Consultants, Inc., which provided cost and price analysis services in support of the Logistics Civil Augmentation Program III contract. Based on our preliminary review, we have initiated a full review of the Resource Consultants, Inc., contract and we will provide the results in a separate report. See Appendix A for details regarding our scope and methodology and prior coverage.

## Background

**Army Sustainment Command (ASC).** The Army Sustainment Command, headquartered at Rock Island, IL, is responsible for a wide range of logistics missions in support of current and future combat operations, ongoing Army training cycles, and worldwide humanitarian and disaster relief efforts. Major Army Sustainment Command responsibilities include field support, materiel management, maintenance of pre-positioned stocks, and contingency contracting

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(providing combat service support like food and lodging through commercial sources). The Army Sustainment Command is a major subordinate command of the Army Materiel Command headquartered at Ft Belvoir, Virginia. Prior to October 2006, the Army Sustainment Command was known as the Army Field Support Command. For consistency, this report refers to the “Army Sustainment Command,” although most of the events described in this report took place prior to October 2006.

**Logistics Civil Augmentation Program (LOGCAP) III.** LOGCAP is a U.S. Army initiative of peacetime planning for the use of DoD contractors in wartime and other contingencies. Contractors perform selected services to support U.S. Forces engaged in DoD missions. Use of contractors in a theatre of operation allows soldiers to focus on combat mission roles rather than combat service support roles. In December 2001, the Army Sustainment Command awarded the LOGCAP III contract to one DoD contractor. The performance period under the LOGCAP III contract included one base year and nine 1-year options. The LOGCAP III contract continues to provide essential combat service support, such as dining facilities, fuel, food, water, and shelter to U.S. Forces in Southwest Asia and other locations. Through December 26, 2008, the Army paid out a cumulative total of \$28.4 billion under the LOGCAP III contract.

The Army Sustainment Command is transitioning from LOGCAP III to LOGCAP IV, which employs a new strategy of awarding work to three different contractors on a competitive basis. The three contractors include KBR, Inc., DynCorp International LLC, and Fluor Intercontinental, Inc. LOGCAP IV draws from the lessons learned during LOGCAP III and calls for improved administration and oversight. The Army Sustainment Command awarded the LOGCAP IV basic contract on April 17, 2007.

**Undefinitized Task Orders on LOGCAP III.** Under LOGCAP III, work is awarded to the contractor on a sole-source basis through the issuance of individual task orders. Task order 59, which provided initial support services to U.S. Forces stationed in Iraq, was among the largest of the LOGCAP III task orders. To meet urgent operational needs, as was the case in supporting U.S. Forces in Iraq, the Army frequently authorized the contractor to begin work before a task order was definitized. An undefinitized task order refers to an order where work has commenced before the Government and contractor agree on the price, terms, or specifications. Although undefinitized task orders allow the contractor to begin work quicker, they carry associated risks to the Government. Recognizing those risks, the FAR and Defense Federal Acquisition Regulation Supplement (DFARS) place limits on the length of time a contract action can remain undefinitized, and the percentage of costs that can be reimbursed before definitization. For example, DFARS 217.7404-3 generally requires definitization within 180 days after work begins. In two separate reports issued in June and July of 2004, the Government Accountability Office noted that the Army had not definitized several LOGCAP III task orders in a timely manner. As of June 2004, the Army had not definitized 31 LOGCAP III task orders, and several of those exceeded the 180-day limit.

**Federal Acquisition Regulation Clause 52.216-26.** FAR clause 52.216-26, *Payments of Allowable Costs Before Definitization*, imposes specific limits on reimbursement of allowable

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costs incurred by a contractor before definitization. Reimbursements to a contractor for cost-reimbursement subcontracts must not exceed 85 percent of allowable costs. In other words, the remaining 15 percent of allowable costs billed by a contractor for cost-reimbursement subcontracts must be withheld until the contract action is definitized. Army contracting officials often refer to this clause as “the 15 percent withhold.” The clause serves to protect the Government’s interests and to incentivize contractors to submit adequate and timely cost proposals in order to facilitate timely contract definitization.

The LOGCAP III contract contained FAR clause 52.216-26, and it applied to LOGCAP III undefinitized task orders. In February 2004, more than 3 years after awarding LOGCAP III, the Army learned that it had failed to withhold a portion of contractor reimbursements required by the clause. Therefore, in noncompliance with FAR clause 52.216-26, the Army had paid the contractor for all of its incurred costs on LOGCAP III undefinitized task orders. After postponing enforcement of the clause for several months in 2004, the Army asked the Director of Defense Procurement and Acquisition Policy to grant a deviation from FAR clause 52.216-26 which would allow the Army to reimburse all costs billed on LOGCAP III undefinitized task orders. The Director of the Defense Procurement and Acquisition Policy granted the deviation on February 2, 2005.

**Defense Contract Audit Agency (DCAA).** DCAA is responsible for conducting all DoD contract audits and providing accounting and advisory services to DoD Components responsible for procurement and contract administration. DCAA questioned millions in costs associated with its audit of several LOGCAP III task orders. In August 2004, two months before the Army requested the FAR deviation, DCAA recommended that the Army begin enforcing FAR clause 52.216-26 because the contractor’s cost proposals continued to be inadequately supported. According to DCAA, the proposal inadequacies caused significant delays in conducting audits and impaired the Government’s ability to definitize LOGCAP III task orders in a timely manner.

**Senate Testimony.** A former Chief of Field Support Contracting at the Army Sustainment Command testified before the Senate Armed Services Committee on July 9, 2008. He testified in part that in August 2004 the Commanding General of the Army Field Support Command directed the LOGCAP III contracting officer to retract a letter informing the LOGCAP III contractor that the “15 percent withhold” (FAR clause 52.216-26) was being implemented. The ASC Commanding General directed the contracting officer to ask the contractor for an operational impact estimate in the event the Army decided to implement the 15 percent withhold.

The former Chief of Field Support Contracting also testified that the Commanding General hired Resource Consultants, Inc. (now SERCO), to replace the DCAA audits as a basis for definitizing estimated costs on task orders.

The former ASC Chief of Field Support Contracting further testified that he believed the ASC Commanding General’s direction to postpone enforcement of the “15 percent withhold” and to use Resource Consultants, Inc., to replace the DCAA audits was inappropriate and resulted in excessive contractor costs paid to the contractor.

# **Findings**

## **A. Decision Not to Withhold Funds on the Logistics Civil Augmentation Program III Contract**

Without authority, two ASC Commanding Generals postponed enforcement of FAR clause 52.216-26 for several months in 2004. The decision to postpone enforcement of the clause was influenced by contractor claims that withholding of funds might adversely affect vital support services provided to the troops. ASC's failure to enforce the clause from inception of the contract and develop a contingency plan for obtaining LOGCAP III services from other sources put the Government at significant risk of overpayment.

Although ASC later obtained a FAR deviation in February 2005, which authorized ASC not to implement the clause, the deviation request did not include complete or accurate information. While the timing of two employee reassignments raised the possibility that they could have been related to the individuals' efforts with regard to the 15 percent withhold issue, we did not find sufficient evidence to substantiate that the efforts of the two ASC contracting officials to implement the FAR clause was the basis for their removal from the LOGCAP III contract. We also did not find sufficient evidence to substantiate that any of the Army officials who spoke to the Senate Armed Services Committee staff were untruthful in describing the events in question.

Detailed answers to the Senate Armed Services Committee questions are discussed below.

**Question 1. Were Army contracting officials responsible for the LOGCAP contract in August 2004 directed by their chain of command to reverse a decision to withhold funds from the contractor because the contractor failed to provide data needed to substantiate contract costs?**

Yes. A preponderance of evidence indicates that the ASC Commanding General directed the LOGCAP III contracting officer to postpone her decision to implement the 15 percent withhold. The ASC Commanding General did not have the authority to postpone the withholding of funds because the FAR mandates it on undefinitized contract actions, absent an approved deviation. The prior ASC Commanding General who retired in June 2004 also did not have the authority to grant earlier postponements to enforcing the clause.

### **Postponements to Implementing the 15 Percent Withhold Prior to August 2004.**

In March 2004, one month after learning that the Army had inadvertently not implemented the 15 percent withhold, the prior ASC Commanding General (now retired) decided to postpone enforcement of the clause for 30 days. The contracting officer

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supported the decision and later issued two additional 60-day postponements, which delayed enforcement of the clause until August 15, 2004. According to the contract file, the prior ASC Commanding General delayed implementation of the clause because the Government revised the statements of work on a large number of task orders. In June 2004, the prior ASC Commanding General retired, and the Army appointed a new commanding general.

**Postponement to Implementing the 15 Percent Withhold in August 2004.** On August 13, 2004, two days before the clause postponement was due to expire, the LOGCAP III contracting officer briefed her chain of command on her intent to implement the 15 percent withhold. The contracting officer decided to begin withholding funds as required by the FAR clause because the reasons for postponing the clause no longer existed. For example, the Government had not changed its requirements for several months. On August 16, 2004, the Defense Contract Audit Agency also recommended enforcing the clause based on continued inadequacies with supporting documentation for the contractor's cost proposals. Initially, the contracting officer's chain of command generally supported the decision. However, the newly appointed ASC Commanding General wanted assurances that withholding of funds would not adversely affect battlefield operations. According to a preponderance of evidence we reviewed, the following events then occurred:

- On August 16, 2004, the contracting officer hand-delivered a draft of a letter to a contractor representative advising that the Army would begin enforcing the FAR clause on future billings. The contractor representative verbally challenged the draft letter.
- On the morning of August 17, 2004, the contracting officer met with contractor officials to reaffirm the Army's decision to enforce the clause.
- Later on August 17, 2004, the ASC Commanding General spoke with the contracting officer by telephone in order to direct her to postpone her decision to enforce the clause until the contractor submitted an estimate of the impact on battlefield operations associated with the withholding of funds.
- On the afternoon of August 17, 2004, the contracting officer issued a letter to the contractor to request an estimate of the impact on battlefield operations, as the ASC Commanding General directed.

This account of events is based on the contracting officer's contemporaneous notes and testimony we received from her and other ASC contracting personnel. It is also consistent with a contractor press release and several news articles quoting an ASC spokesperson. In an August 17, 2004, press release, the contractor announced that the Army would begin enforcing the clause on all future contractor billings. On August 17, 2004, a USA Today (Reuters) news article stated,

“The Army said earlier Tuesday it had decided that starting Wednesday it would withhold 15% of payments ...But later the

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Army indicated it would continue to reimburse in full ...the Army's biggest contractor in Iraq, for feeding and housing troops there. 'I just got a phone call putting on hold the 15% withhold clause implementation and I don't know why or any of the particulars,' said ASC's spokeswoman."

The ASC spokesperson told us the news article accurately reflects her recollection of events and her statement to the media. While the ASC Commanding General and other Army officials told us they do not recall the events of August 17, 2004, the ASC Commanding General does not deny giving such direction. Responding to the contracting officer's notes of the August 17, 2004, telephone call, the ASC Commanding General testified to us "The notes from that phone call sounds like stuff that I would say."

**Authority and Responsibility of the Commanding General and Contracting Officer.** As the Head of the Contracting Activity, the ASC Commanding General has broad powers in managing the contracting activity. Under FAR 1.602-1, contracting officers receive their authority and warrant from the appointing authority, which is the Commanding General in the case of ASC. Accordingly, the Head of the Contracting Activity has the authority to give direction to a contracting officer under his or her command, provided the direction does not violate law, FAR, DFARS, or other applicable DoD regulations, directives and instructions. However, as explained in our answer to question 3 below, the Commanding General's direction to further postpone enforcement of the clause in August 2004 did not comply with the FAR. Likewise, the prior Commanding General in place before June 2004 did not have the authority to issue the earlier postponements that expired on August 15, 2004.

Because the contracting officer's actions were based on orders from the ASC Commanding General, the contracting officer is not responsible for failing to implement the 15 percent withhold.

**Question 2. Did anybody in the chain of command discuss the withhold issue with contractor officials in August 2004, and did any such discussions influence the Army's position on withholding funds from the contractor.**

Yes. Throughout 2004, contractor representatives discussed the withhold issue with senior officials at ASC and the Army Materiel Command. The contractor's claim that the withholding of funds might impact vital support services to the troops influenced the Army's position not to implement the 15 percent withhold. Taking into account the contractor's claim and ASC's lack of an alternative plan for obtaining the services from other sources, the ASC Commanding General felt that enforcing the clause could jeopardize battlefield operations. ASC had thus failed to comply with DoD Instruction 3020.37 by not maintaining a contingency plan for continuing essential LOGCAP III services in the event the contractor did not fulfill its contractual

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obligations. ASC has since changed its acquisition strategy on LOGCAP IV to avoid the reliance on one contractor and to help ensure that enforcement of contract clauses is not jeopardized.

**Contractor Discussions Prior to August 2004.** Senior Army officials at Rock Island Arsenal met with the contractor to discuss several issues impacting the execution of the LOGCAP III contract in 2004, including the 15 percent withhold. Even though the clause was included in the contract, contractor officials strongly disagreed with clause enforcement on the basis that the clause only applied to letter contracts, not LOGCAP III task orders. The contractor also warned ASC that clause enforcement would threaten their financial ability, or their subcontractor's financial ability, to perform on the contract. The contracting officer obtained a legal opinion from the ASC General Counsel who disputed the contractor's claim that the clause did not apply and recommended immediate enforcement of the FAR clause.

**Contractor Discussions in August 2004.** In an August 4, 2004, letter to the LOGCAP III contracting officer, the contractor requested another 60-day postponement in enforcing the FAR clause based on progress made in definitizing LOGCAP III task orders. According to testimony, the contractor also spoke with several Army officials to aggressively dispute enforcement of the clause. The contractor warned the Army that it would pass the withholding of funds to its subcontractors, which could cause a severe disruption of vital support services provided to the troops. Two officials, one from ASC and one from the Army Materiel Command, testified that a contractor representative had even threatened to initiate a lawsuit against them personally as well as the Army over any withholding of funds. When the contracting officer hand-delivered the draft letter on August 16, 2004, contractor representatives again expressed their strong disagreement with the decision and stated that the withholding of funds "would get turned around."

According to testimony we received, the ASC Deputy Commanding General spoke to, and exchanged emails with, contractor officials about clause enforcement on August 15, 2004. In an email reply to the contractor, the ASC Deputy Commanding General advised the contractor that ASC was "leaning toward withholding funds" due to a lack of progress in definitizing task orders. The Commanding General testified that he did not recall holding any discussions with the contractor in August 2004. We also did not find any written evidence that the ASC Commanding General had communicated with contractor representatives just prior to his postponing enforcement of the clause on August 17, 2004. The Deputy Assistant Secretary for Policy and Procurement testified to us that she and the Deputy Secretary of Defense for Acquisition and Policy had met with the contractor around this time, but she could not recall if any part of the meeting addressed the withholding of funds under the FAR clause.

**Influence on Army Decision.** The contractor's claims concerning the potential impact on LOGCAP III support services did influence the ASC Commanding General's decision

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to postpone enforcement of the FAR clause and ultimately request a FAR deviation. ASC would have likely begun clause enforcement in March 2004 had the contractor not argued aggressively against it.

In explaining ASC's actions, the ASC Commanding General and other Senior ASC officials said they were concerned that enforcing the clause could seriously jeopardize battlefield operations. ASC relied exclusively on one prime contractor and its subcontractors to provide most of the logistical support to troops in theatre. According to ASC contracting officials, this reliance diminished the government's leverage in enforcing critical contract clauses such as FAR clause 52.216-26. Several ASC and Army Materiel Command officials told us they did not have an alternative plan for obtaining the essential support services from other sources.

We also did not find any evidence in the contract file that ASC had developed contingency plans for providing essential LOGCAP III services in the event the prime contractor or its subcontractors did not fulfill their LOGCAP III contractual obligations. ASC's failure to maintain such a contingency plan does not comply with DoD Instruction 3020.37, "Continuation of Essential DOD Contractor Services during Crises." Paragraphs 4.3 and 4.4 of DoD Instruction 3020.37 states:

"DoD Components working with contractors performing essential services shall develop and implement plans and procedures which are intended to provide reasonable assurance of the continuation of essential services during crisis situations using contractor employees or other resources as necessary.

For situations where the cognizant DoD Component Commander has a reasonable doubt about the continuation of essential services during crisis situations by the incumbent contractor, the Commander shall prepare a contingency plan for obtaining the essential service from alternative sources (military, DoD civilian, host-nation, other contractor(s))."

In addition, Paragraph 6.5 of DoD Instruction 3020.37 states:

"Determine prior to contract award, or prior to modification to extend the performance period, whether an interruption of service would result in an unacceptable risk. If an unacceptable risk would result, develop a contingency plan to ensure continued service."

Despite having to modify the LOGCAP III contract each year to extend the performance period, ASC failed to recognize the need to develop a plan to ensure continued LOGCAP III services as DoD Instruction 3020.37 requires. ASC must develop policies and procedures to ensure future compliance with DoD Instruction 3020.37.

The ASC Commanding General who assumed command in June 2004 did direct that the acquisition strategy for the LOGCAP IV contract provide for multiple contractors to

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compete on individual task orders. This strategy should help to ensure that critical contract clauses such as FAR clause 52.216-26 will not be jeopardized in the future.

**Question 3. Was the Army's decision not to withhold funds from the contractor in August 2004 consistent with the requirements of the Federal Acquisition Regulation?**

No. The ASC Commanding General's decision to postpone the withholding of funds in August 2004 was inconsistent with the FAR. The ASC Commanding General did not have legal authority to postpone enforcement of the FAR clause prior to receiving the approved FAR deviation in February 2005. In addition, the failure to enforce the clause from inception of the contract in December 2001 (nearly 3 years) represents a significant internal control weakness that put the Government at significant risk for overpayment. We also determined the Army's request for deviation omitted relevant facts about the financial impact on the contractor. In addition, the Army could not support the statement in the deviation request that it had examined available alternatives. These discrepancies could have affected the decision to approve the deviation.

**Lack of Internal Controls for Enforcing Contract Clauses.** ASC contracting officials told us that around February 2004, they discovered that the 15 percent withhold had not been implemented due to an oversight. Clearly, the failure to do so put the Government at significant risk for overpayment and complicated FAR clause enforcement thereafter. Even though this serious oversight took place over 5 years ago, we did not see any evidence that ASC had reviewed or taken action to improve its procedures or internal controls related to contract clause enforcement. ASC needs to take immediate action to help ensure future compliance with all contract clauses.

**Postponements Did not Comply with the FAR.** The language of FAR clause 52.216-26 is directive and mandatory. For example, paragraph (b) of the clause states "...The total reimbursement made under this paragraph *shall not* exceed 85 percent of the maximum amount of the Government's liability, as stated in this contract." (emphasis added) This FAR clause does not allow for the use of discretion by contracting officials. Accordingly, neither the contracting officer nor the Head of the Contracting Activity at ASC had the authority to postpone enforcement of the clause from March 2004 until February 2005 (when ASC received an approved FAR deviation). Obtaining an approved deviation in accordance with the FAR, DFARS, or AFARS was the only legal means of not implementing the 15 percent withhold.

**Army Deviation Request was Incomplete and Not Supported.** In late August 2004, ASC contracting officials began drafting a request to deviate from the FAR clause, which would allow ASC to pay all allowable costs on undefinitized task orders. According to the contract file, the ASC Commanding General sent the request through the Commander

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of the Army Materiel Command and Deputy Assistant Secretary of the Army for Policy Procurement on October 29, 2004, who then forwarded it to the Director of Defense Procurement and Acquisition Policy for approval.

FAR Subpart 1.4 and Defense Acquisition Regulation Supplement (DFARS) 201.4 prescribe the policies and procedures for requesting and approving deviations from the FAR. DFARS 201.402(2)(ix) states that a deviation request must “Give detailed rationale for the request.” As addressed in Paragraph 7 of the ASC deviation request, the rationale for deviating from the FAR clause focused on two main points:

- The contractor indicated that the financial hardship of exercising the clause would threaten its ability to perform on the contract.
- ASC had examined alternative means of providing LOGCAP III services in the event of a contract disruption and found no mechanism to prevent a profound impact to the soldier.

If accurate, the Army’s rationale would support the deviation granted by the Director of Defense Procurement and Acquisition Policy. Given the critical nature of the services provided, the Army could not risk a significant disruption to the LOGCAP III support services. However, as discussed below, we found that the Army omitted relevant facts and did not support its claim that ASC had considered available alternatives. These matters could have affected the decision to grant the FAR deviation.

*Financial Hardship Caused by Clause Enforcement.* The Army appeared to rely solely on statements from the contractor that the financial hardship of clause enforcement would threaten the contractor’s ability to perform on the contract. For example, the deviation request states that the contractor, “estimates the impact, should the Government invoke the provisions of the clause, to be in the range of \$60 million per month.” We found no evidence in the contract file that the Army had attempted to validate this and other contractor claims regarding the significance of the financial hardship. In fact, we noted indications in the contract file that some Army officials felt the \$60 million figure was exaggerated.

We also question why the Army used the financial hardship of the contractor as a basis for requesting the deviation. According to an Army internal memorandum dated September 15, 2004, the Army had already concluded that the contractor could financially perform on the contract despite clause enforcement. DCAA and DCMA also concluded that the 15 percent withhold would not create a significant financial impact on the contractor.

Moreover, the deviation request omitted the fact that the contractor’s parent company had guaranteed performance on the contract. The parent company was therefore contractually obligated to provide the resources necessary to ensure contract performance.

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*Examination of Alternative Means for Providing LOGCAP III Services.* We found no evidence in the contract file that the Army had considered available alternatives in the event the contractor did not fulfill its critical obligations under the LOGCAP III contract. Therefore, ASC's statement that it had examined alternatives may be inaccurate.

We found that ASC appeared to have alternatives available to it that were not fully explored. An ASC Associate General Counsel had recommended issuing a cure notice to the contractor, which would have required the contractor to correct any impediments to contract performance. However, ASC did not issue a cure notice. If the contractor had defaulted on the contract, ASC also had the option of working directly with the subcontractors to prevent a significant disruption to vital services. ASC should have documented its serious consideration of these and other options before claiming that it had done so in the request for deviation.

**Commanding General Responsibility.** According to his June 2004 appointment letter as Head of the Contracting Activity, the ASC Commanding General was responsible for ensuring compliance with all regulations, including the FAR and DFARS. In addition, the ASC Commanding General signed the FAR deviation request and was therefore responsible for its accuracy and completeness. Violating the FAR clause is a failure to adhere to a regulatory requirement and could be considered a failure to protect the Government's interests. The Army Materiel Command should consider appropriate corrective actions for failing to implement the 15 percent withhold and submitting an inadequate FAR deviation request.

In determining appropriate corrective actions, we identified the following circumstances that the Army should consider. Regarding the failure to enforce the FAR clause, the ASC Commanding General's actions appear to be based on his concern that the troops receive vital support services. In addition, the ASC Commanding General who assumed command in June 2004 inherited some of the deficiencies linked to the withhold issue, such as the failure to implement the withhold from inception of the contract and to maintain a contingency plan for essential LOGCAP III services. However, our review also reflects that the ASC Commanding General did not take prompt and decisive corrective action once he became aware of the deficiencies.

Regarding the FAR deviation request, we note that the ASC Commanding General chose this option to avoid any potential disruption to battlefield operations. However, the evidence also indicates that ASC Commanding General relied solely on contractor statements concerning the estimated impact on battlefield operations without verifying these statements or performing a thorough and independent review of the estimated impact.

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**Question 4. Was the removal of Army contracting officials responsible for the LOGCAP III contract in August 2004 the result of their effort to withhold funds from the contractor?**

No. While the timing of the reassignments raised the possibility that they could have been related to the individuals' efforts on the 15 percent withhold issue, we did not find sufficient evidence to substantiate that the efforts of the Chief of Field Support Contracting and the LOGCAP III contracting officer to withhold funds were the basis for their reassignment from the LOGCAP III contract. However, ASC management did not carry out the reassignments in a professional manner.

**Reassignment of the ASC Chief of Field Support Contracting.** The ASC Chief of Field Support Contracting, who was the immediate supervisor of the LOGCAP III contracting officer, had fully supported the contracting officer's decision to implement the 15 percent withhold in August 2004. On or about August 17, 2004, he learned that ASC management was reassigning him from managing the LOGCAP III contract. Effective September 5, 2004, he began leading a team dedicated to the LOGCAP IV planning efforts. One year after the reassignment, ASC management terminated his temporary promotion.

Based on testimony we received, we determined that the former ASC Chief of Field Support Contracting's support for the 15 percent withhold was not a primary factor in his reassignment. ASC senior management had considered reassigning the ASC Chief of Field Support Contracting at least 45 days before the August 2004 decision to postpone implementation of the FAR clause. In late June 2004, an ASC senior manager first advised the ASC Chief of Field Support Contracting that ASC management might reassign him. On July 30, 2004, 18 days before the August 2004 decision, the ASC Commanding General offered the Chief of Field Support Contracting position to an employee managing another ASC division.

The testimony reflects that ASC management wanted new direction on the LOGCAP III contract for two primary reasons. First and foremost, the ASC Commanding General and other senior DoD officials were not satisfied with the progress made in reducing the backlog of undefinitized task orders, which the Government Accountability Office stated should be a top priority for the Army. Second, the ASC Chief of Field Support Contracting resisted the ASC Commanding General's plan for increasing the presence of contracting officers stationed in the theatres of operation.

We did note that the former ASC Chief of Field Support Contracting learned of his reassignment on or about August 17, 2004, only hours after the ASC Commanding General directed the contracting officer to postpone the withholding of funds. While the timing raises the possibility that the reassignment could be related to the individual's efforts with regard to the 15 percent withhold issue, we did not find sufficient evidence to confirm this relationship.

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We also reviewed the circumstances surrounding the termination of the temporary promotion, which took place 1 year after his reassignment. We did not find sufficient evidence of a link between the termination of the temporary promotion and his support for FAR clause enforcement. When the employee appealed the decision, a human resources specialist performed a review of the duties and responsibilities of the position and determined that the action was justified.

**Reassignment of the LOGCAP III Contracting Officer.** Effective October 3, 2004, ASC management reassigned the LOGCAP III contracting officer to another ASC division. The employee lost her temporary promotion as a result of the reassignment. On September 10, 2004, three weeks prior to the reassignment, the contracting officer requested a transfer to another division, but ASC management initially denied it. On September 14, 2004, ASC management issued a memorandum to the contracting officer entitled *Direction to Deploy*, requiring the contracting officer to deploy to Southwest Asia in 12 days for a period of 6 months. The memorandum reminded the contracting officer that she held an emergency essential position and was subject to disciplinary action (including removal from Federal service) if she refused to deploy. The contracting officer could not deploy for personal reasons. After the contracting officer appealed the decision, ASC management eventually agreed to grant her transfer request with a loss of her temporary promotion.

Like the Chief of Field Support Contracting, the evidence indicates that the contracting officer's efforts to enforce the FAR clause were not the primary reason for her reassignment. The LOGCAP III contracting officer had significant differences of opinion on the direction of the LOGCAP III program with her supervisor, the new Chief of Field Support Contracting. The timing of this reassignment also raises the possibility that it could be related to her effort to withhold funds. However, the preponderance of testimony we received suggests that it was primarily based on a disagreement over the deployment of contracting officers and the use of Resource Consultants, Inc., to resolve the DCAA audit findings.

**ASC Management Authority to Reassign Employees.** The ASC Commanding General and Head of the Contracting Activity had broad discretion in managing the contracting function, including the authority to make personnel reassignments. ASC management acted within their authority in reassigning the Chief of Field Support Contracting and the LOGCAP III contracting officer. Since the employees held temporary promotions, ASC management also had the authority to terminate the promotions at any time.

However, ASC management did not carry out the reassignments in a professional manner. The Chief of Field Support Contracting only learned about his reassignment after his replacement showed up unexpectedly at a joint meeting with contractor representatives. Moreover, the 12-day notice of deployment issued to the LOGCAP III

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contracting officer was irregular since ASC normally provides civilian personnel with a 60-day notice to deploy. Although ASC management had the authority, we question the mission-essential need for the extraordinarily short notice, particularly since ASC management has never deployed the position held by the reassigned employee.

The ASC Commanding General told us he did not know that his management team had given a *Direction to Deploy* notice to the contracting officer. He agreed that the 12-day notice was unreasonable under the circumstances. ASC should review its policies and procedures for reassigning employees and make appropriate corrective actions to help ensure that ASC management carries out future reassignments in a professional manner.

**Question 5. Were Army officials interviewed by Committee staff over the last several months truthful in their description of these events?**

We did not find sufficient evidence that any of the Army officials who spoke to the Senate Armed Services Committee staff were untruthful in describing the key events in question. Our review did not disclose significant discrepancies between the interview notes provided by the Senate Armed Services Committee staff and the testimony we received.

Our review of the Senate staff interview notes and the testimony we received established that witness recollections of events varied from witness to witness. This is understandable considering that the events in question occurred about four years prior to the Senate staff interviews. While the ASC Commanding General did not recall many of the specific events surrounding his reversal of the LOGCAP III contracting officer's decision to enforce the FAR clause, he does not necessarily dispute the LOGCAP III contracting officer's account of those events.

## **Management Comments on the Finding and Our Response**

The AMC Acting Executive Deputy to the AMC Commanding General did not concur with our findings on Questions 1 through 3, but concurred to our findings on Questions 4 and 5. The management comments include general comments as well as specific comments to our findings on Questions 1 through 3.

**General Management Comments.** The Acting Executive Deputy to the AMC Commanding General stated that the findings and recommendations are based on an incomplete record because we did not interview the Assistant Secretary of the Army for Acquisition, Logistics and Technology to obtain his comments and perspective. The Assistant Secretary was personally and substantially involved in the decisions regarding the implementation of FAR 52.216-26 and the submission of the DoD waiver.

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**Our Response.** On November 24, 2009, we interviewed the prior Assistant Secretary of the Army for Acquisition, Logistics and Technology. Although the ASC contract file does not document any involvement by the prior Assistant Secretary, we learned from the interview that the request for deviation was coordinated through his office and that he had supported it. However, his testimony did not provide a basis to change our findings. His concurrence does not negate the fact that the prior postponements to implementing the 15 percent withhold did not comply with the FAR. He testified to us that he was not aware of the 2004 postponements to implementing the clause, or the reversal of the contracting officer's attempt to implement the clause on August 17, 2004. We also learned that he relied largely on the accuracy and completeness of the deviation request in supporting it, as did the Director of Defense Procurement and Acquisition Policy. For example, he was not aware of the corporate guarantee of contract performance because it was not disclosed in the ASC deviation request. Such reliance is not unusual or unreasonable for a high-level senior official.

**Management Comments-Question 1.** The AMC Acting Executive Deputy did not concur. According to the Acting Executive Deputy, the March 2004 postponement and its continuation by the new ASC Commander was consistent with the authority in AFARS 5101.43. The subsequent request for a class deviation to withhold funds could also be viewed as an implicit grant of an individual deviation by the ASC Commanding General. The Defense Procurement and Acquisition Policy memorandum dated February 2, 2005, further demonstrates the proper exercise of the Head of the Contracting Activity's authority. FAR 1.403 and AFARS 5101.403 provided the authority for the Head of the Contracting Activity and the Principal Assistant Responsible for Contracting at ASC to grant a deviation. AFARS 5101.403(1), *Individual Deviations*, states:

- (1) Only PARCs may approve individual deviations to FAR, DFARS, and AFARS. This authority does not extend to areas set forth in DFARS 201.402; to any provisions which limit approval authority to a level higher than a HCA; (sic) and to any provisions based upon statute or Executive Order unless such authority provides for waiver.

**Our Response.** We disagree with the management comments. The postponements to implementing the 15 percent withhold are not consistent with the authority in AFARS 5103.43 for obtaining a deviation. The postponements involved temporary and unauthorized delays in enforcing the FAR requirement, while the authority in AFARS 5103.43 addresses formal steps for approving individual contract deviations.

The ASC Commanding General's request for a class deviation cannot be viewed as an "implicit grant" of an individual deviation because the AFARS requires that specific steps be taken in approving deviations. The contracting activity must assign a control number to each approved deviation and furnish a copy to the Office of the Deputy Assistant Secretary of the Army (Procurement), Procurement Policy and Support Directorate. The LOGCAP III contract file contains no evidence to demonstrate that these steps were taken or that an individual deviation was approved in advance of

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the 2004 postponements. Email evidence indicates that ASC did not decide to pursue a deviation until around August 30, 2004, after ASC had granted the last postponement on August 17, 2004. We re-interviewed the prior ASC Principal Assistant Responsible for Contracting who stated that he did not recall approving an AFARS individual deviation request at any time in 2004. The first documented deviation approved by the Principal Assistant Responsible for Contracting took place on June 29, 2005, in order to extend the deviation authority granted by the Defense Procurement and Acquisition Policy on February 2, 2005.

We noted that ASC had requested a “class deviation,” rather than an individual deviation, based on legal advice from Associate General Counsels at ASC and AMC. The legal advice stated that a class deviation was required to waive the 15 percent withhold requirement on the LOGCAP III program because the task orders issued under LOGCAP III contract represented multiple “contract actions.” However, in granting the deviation approval on February 2, 2005, the Director of Defense Procurement and Acquisition Policy stated that the request qualified as an individual deviation, which authorized the Army to approve all future deviations. As AMC points out, AFARS 5101.403(1) designates the Principal Assistant Responsible for Contracting as the approving official for all individual deviation requests within the Army.

We have identified two preliminary concerns related to the designation of the LOGCAP III deviation request as an individual deviation. First, we are concerned that the regulations might be unclear with respect to the criteria for individual and class deviations. The Army’s interpretation of the applicable regulations differed significantly from that of Defense Procurement and Acquisition Policy, which suggests a need for clarification. Second, we are concerned that the Principal Assistant Responsible for Contracting has the authority to approve all individual deviations regardless of significance. Given the significance and sensitivity of the LOGCAP III deviation, our preliminary finding is that a higher senior DoD official outside the immediate contracting chain of command should approve such deviations. We are still reviewing these concerns and we will report our recommendations, if any, in a separate memorandum to the Director of Defense Procurement and Acquisition Policy and the Army.

**Management Comments-Question 2.** The AMC Acting Executive Deputy did not concur. The Acting Executive Deputy stated our review failed to recognize that the LOGCAP III contract was awarded to "augment" the primary means of providing logistics support to deployed forces. AMC believes that the contract implements DoD Instruction 3020.37 such that the PCO possesses the legal authority to require continued performance. Finally, the Acting Executive Deputy said our review fails to recognize that LOGCAP III is the contingency contract for use by the Army during times of crisis to ensure continuation of essential services in accordance with DoD Instruction 3020.37.

**Our Response.** We disagree with the management comments. When LOGCAP III was awarded in December 2001, the Army might have intended to use LOGCAP III to

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“augment” the primary means of providing support services. However, the Army has relied on LOGCAP III to essentially be the only means of providing support services to the troops in the major theatres of operation, including Iraq and Afghanistan. In noncompliance with DoD Instruction 3020.37, the Army had not developed procedures for providing reasonable assurance that the LOGCAP III essential services would continue despite major contractual disputes such as the 15 percent withhold requirement. Several Army officials acknowledged that they had to request a deviation of the 15 percent withhold requirement, a mandatory and critical contract clause for protecting the Government’s interests on undefinitized contract actions, in part because the Army had not developed a backup plan for providing these services. The Army should not have placed itself in a position of having to waive critical and mandated contractual requirements when a contractor later decides to object to them.

While AMC claimed that the contracting officer possesses the legal authority to require continued performance in the event of major dispute, the management comments did not identify this authority. Assuming that such legal authority exists, ASC chose not to exercise it to resolve the 15 percent withhold dispute while ensuring the continuation of essential services.

We strongly dispute the AMC claim that the LOGCAP III contract itself is the contingency contract which ensures continuation of services in accordance with DoD Instruction 3020.37. This interpretation of DoD Instruction 3020.37 is without merit and alarming considering the magnitude and critical nature of the services provided under LOGCAP III to the warfighter. The mere existence of a contract with a DoD contractor does not satisfy the requirements contained in DoD Instruction 3020.37. Paragraph 4.3 of the Instruction emphasizes that *when DoD Components use contractors* to perform essential services, they must develop and implement plans and procedures intended to provide reasonable assurance of the continuation of essential services during crisis situations. Paragraph 6 of this Instruction defines what each DoD Component is required to do for services designated as mission essential. We noted that ASC had not even identified the services designated as mission essential in the LOGCAP III statement of work, as required by DoD Instruction 3020.37, paragraph 6.1.

We spoke to the Deputy Director, Requirements/Program & Budget Coordination, Office of Undersecretary of Defense (Personnel and Readiness), who is responsible for the maintenance of DoD Instruction 3020.37. The Deputy Director agreed with our interpretation of this Instruction. The Deputy Director emphasized that if a DoD Component has doubts that an “incumbent contractor” can or will continue to perform an essential function and has not prepared a contingency plan, the DoD Component is not in compliance with DoD Instruction 3020.37.

The Government Accountability Office and the Commission on Wartime Contracting in Iraq and Afghanistan previously reported DoD’s failure to comply with DoD Instruction 3020.37. In 2003, the Government Accountability Office reported that DoD

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had done little to identify essential services provided by contractors and develop plans to ensure continuation should contractors become unavailable. In June 2009, the Commission on Wartime Contracting in Iraq and Afghanistan found that little had been done since the 2003 Government Accountability Office report. ASC should make compliance with DoD Instruction 3020.37 a priority partly by implementing quality assurance procedures for the preparation of contingency plans which ensure the continuation of essential DoD contractor services.

**Management Comments-Question 3.** The AMC Acting Executive Deputy did not concur. She pointed out that the original decision to postpone the withholding of funds occurred in March 2004 and was approved by the ASC Head of the Contracting Activity and others in his chain of command. The management comments state that we were incorrect in asserting that ASC did not provide adequate information to DoD decision-makers. The deviation request provided an analysis of the conditions surrounding the request for deviation, according to the Acting Executive Deputy. The management comments also state that there was considerable discussion between various DoD officials outlining the consequences if the contractor was unable to financially support the Army. AMC suggested that we ask the prior Director of Defense Procurement and Acquisition Policy if she felt there was adequate information in the deviation request upon which to base her decision. Finally, AMC said that alternatives such as contract termination were not reasonable because other contractors were not available to mobilize 19,000 workers to support the mission on short notice.

**Our Response.** We disagree with the management comments. While the ASC Head of the Contracting Activity and others approved the postponements, they did not have the authority to grant this approval.

We maintain that the deviation request was incomplete and inaccurate. The management comments misrepresent a March 2004 email written by the then Head of the Contracting Activity (Attachment 9 of the management comments), which reads in pertinent portions:

“Enforcement of the contract clause is causing (the contractor) great concern as far as their liquidity and solvency.... I am having, or at least asking, (the contractor) layout for me their business case so we have full understanding of their position. They are alleging \$1.1 billion in working capital out there....that number floats as does the amount they attribute to Restore Iraq Oil and LOGCAP.” (contractor name omitted)

The Head of the Contracting Activity was conveying the contractor’s concerns regarding their financial ability to perform, not his own. The ASC Head of the Contracting Activity had correctly asked the contractor to provide additional evidence in support of the alleged financial impact. Months later, the Army and the Defense Contract Audit Agency had concluded that the contractor could financially perform on the contract despite the 15 percent withhold requirement.

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We are not questioning the consequences that might have occurred if the LOGCAP contractor was unable to financially support the Army. We previously stated the Army could not risk a significant disruption of LOGCAP III support services given the critical nature of those services. However, we do question why the Army cited some of the contractor's financial hardship claims without verifying them, particularly when an internal Army memorandum had already concluded that the 15 percent withhold would not cause a significant financial impact on the contractor. We also question ASC's failure to disclose the fact that the contractor's parent company had guaranteed performance on the contract. Finally, we question whether ASC had actually examined alternative means of providing the LOGCAP III services as it claimed in the deviation request, since we found no evidence that such an examination had been performed. AMC's management comments do not provide a basis to change these findings.

We interviewed the prior Director of Defense Procurement and Acquisition Policy as part of our review. We previously stated that the Army's rationale presented in the deviation request would warrant a deviation assuming it was accurate and complete. However, like the prior Assistant Secretary of the Army for Acquisition, Logistics and Technology, we found that the prior Director of Defense Procurement and Acquisition Policy had largely relied on the accuracy and completeness of the deviation request in granting her approval. As the senior DoD approving official, she was not expected to verify the accuracy and completeness of all aspects of deviation requests. Our interview with the Director of Defense Procurement and Acquisition Policy disclosed that she was not aware that the contractor's parent company had provided a guarantee of performance on the contract. The guarantee states:

“The Guarantor agrees to provide the Offeror all necessary and required resources *including financing* which are necessary to assure the full, complete and satisfactory performance of such contract.” (emphasis added)

Whether or not this omission or other inaccuracies would have affected her approval, ASC had an obligation to provide accurate and complete information so that the approving official could make an informed decision.

While AMC now states that alternatives such as termination were not reasonable, the fact remains that the contract file contains no evidence that ASC had examined alternative means of providing the services as the deviation request asserts. Viable alternatives other than termination could have been available to resolve the disagreement without resorting to a deviation. As previously stated, ASC should have documented its consideration of available alternatives such as issuing a cure notice to require the removal of any impediments to contract performance. It should be noted that the vast majority of the LOGCAP III services were subcontracted out, so the Army would not necessarily be required to replace 19,000 workers on short notice. The Army had the option of working

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directly with subcontractors to prevent a significant disruption of the services. The ASC Chief Counsel had suggested this option, but the contract file fails to document whether this option was considered executable.

## **Recommendations, Management Comments, and Our Response**

### **Recommendation A. We recommend that the Commanding General of the Army Materiel Command:**

- 1. Develop quality assurance procedures for requesting Federal Acquisition Regulation deviations to ensure that such requests comply with the applicable regulations and accurately reflect all relevant facts for consideration by the approval official.**

**Management Comments.** The Acting Executive Deputy to the AMC Commanding General concurred. The Executive Director of the US Army Contracting Command, in collaboration with Assistant Secretary of the Army for Acquisition, Logistics, and Technology, will ensure that the appropriate focus is paid to adequately documenting deviation decisions in accordance with FAR, DFARS and AFARS requirements.

**Our Response.** The management comments meet the intent of our recommendation. However, we request that AMC identify the specific quality assurance procedures it will implement for helping to ensure that FAR deviation requests comply with applicable regulations and reflect all relevant facts. We request that AMC provide a copy of the specific quality assurance procedures to the DoD Inspector General, Office of Audit Policy and Oversight.

- 2. Implement quality assurance procedures for ensuring the preparation of contingency plans for the continuation of essential DoD contractor services in accordance with DoD Instruction 3020.37.**

**Management Comments.** AMC concurred. AMC stated that the recommendation has been accomplished through the acquisition strategy implemented under LOGCAP IV.

**Our Response.** The management comments are not responsive. The acquisition strategy implemented under LOGCAP IV does not satisfy the requirement to develop contingency plans for the continuation of essential DoD contractor services, such as those provided under LOGCAP. The LOGCAP III contract is still ongoing. Although the LOGCAP IV strategy maintains multiple contractors,

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it does not eliminate the need for the Army to develop plans and procedures which provide reasonable assurance for continuation of essential services without significant disruption, using contractor employees or other resources as necessary.

**3. Consider appropriate corrective actions regarding the failure of the Army Sustainment Command to enforce Federal Acquisition Regulation clause 52.216-26 without proper authority.**

**Management Comments.** AMC did not concur. AMC stated that the action taken was in accordance with AFARS 5101.43. See “Management Comments-Question 1” above for additional details.

**Our Response.** We disagree that ASC took action to approve an individual deviation in accordance with AFARS 5101.43. The ASC contract file contained no evidence that ASC had executed an individual deviation or complied with the required steps for approving individual deviations. Refer to “Our Response” to “Management Comments-Question 1” above for additional details. However, we have determined that AMC’s response to Recommendation B.1 below should also satisfy the intent of this recommendation. AMC’s agreement to implement quality assurance procedures for ensuring that the Army enforces all contract clauses should also help prevent future failures to comply with FAR 52.216-26 without proper authority.

**Recommendation B.** We recommend that the Commanding General of the Army Sustainment Command:

**1. Implement quality assurance procedures for ensuring that the Army enforces all contract clauses. As part of this effort, the Army Sustainment Command should provide training to contracting officials on the proper use of undefinitized contract actions.**

**Management Comments.** AMC concurred. Training is currently incorporated into ongoing acquisition training and emphasized as part of the procurement contracting officer development and training process.

**Our Response.** The management comments meet the intent of our recommendation. We request that ASC identify the training that is currently incorporated in the acquisition training process, and any other quality assurance procedures it has implemented since 2004, which help to ensure the enforcement of all contract clauses and the proper use of undefinitized contract actions.

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- 2. Review and make appropriate changes to the policies and procedures for reassigning employees to ensure that management carries out the reassessments in a professional manner.**

**Management Comments.** The Acting Executive Deputy to the AMC Commanding General concurred. ASC is developing an updated supervisory development course which will detail appropriate reassignment procedures. ASC expects to complete the new training course in February 2010.

**Our Response.** The management comments are responsive. When completed, we request that ASC provide a copy of the newly developed training course to the DoD Inspector General, Office of Audit Policy and Oversight.

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## B. Army Use of Resource Consultants Incorporated on Logistics Civil Augmentation Program III

As of September 2004, the Army Sustainment Command had awarded two contracts worth \$6 million to Resource Consultants, Inc. (RCI), to perform cost analysis services. Our preliminary review of the Army's use of RCI disclosed concerns that we will address in our ongoing review of contracting officer actions on incurred cost audit reports involving Iraq reconstruction activities.

**Background.** DCAA audits of various LOGCAP III task order proposals in 2004 resulted in DCAA questioning millions of dollars, and the contractor did not agree with a large portion of those questioned costs. In 2004, the Army Sustainment Command set up two Special Cost Analysis teams charged with negotiating the more significant and contentious questioned costs issues reported by DCAA, which had to be resolved before definitizing various LOGCAP III task orders. The Deputy Assistant Secretary of the Army for Policy and Procurement had set a March 31, 2005, deadline for negotiating all LOGCAP III undefinitized task orders. In September 2004, the Army Sustainment Command issued two contracts valued at \$6 million to RCI to provide cost analysis services in support of the Army's negotiation efforts. According to the contracts' statement of work, RCI was required to:

- perform a comprehensive independent evaluation of the contractor's cost proposals, taking into account all Government cost evaluations including, but not limited to, audit reports issued by DCAA and technical evaluations issued by DCMA;
- address the contractor's proposal and the corresponding position as expressed in the various Government audit and technical evaluations on a line item basis; and
- submit its findings in a written final report which had to be sufficiently documented to allow the Government to fully understand the basis of the RCI estimate.

**Results of Preliminary Review.** We determined that a full review of the Army's use of RCI in support of LOGCAP III negotiations is warranted. We are performing the full review in our second in a series of reviews focused on contracting officer actions on incurred cost audits of contractors involved in Iraq reconstruction activities. Based on our preliminary review, we identified the following concerns:

- The type of services provided by RCI may qualify as accounting and auditing services covered under DoD Directive 7600.2, *Audit Policies* (Version dated March 20, 2004), which requires prior approval by the DoD Assistant Inspector

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General for Audit Policy and Oversight. The Army Sustainment Command did not obtain approval in accordance with DoD Directive 7600.2 before utilizing the services.

- The negotiation memorandum for the dining facilities cost, which comprised a large portion of total costs, indicates that the Army solely used estimates prepared by RCI as a baseline to settle the cost. The negotiation memorandum does not address the DCAA questioned costs or explain the fundamental differences between the DCAA and RCI positions. DoD Instruction 7640.02, Enclosure 3, paragraph 3.b., requires that the contracting officer document his or her rationale for any disagreement with the auditor. While DCAA had questioned \$360 million in dining facility costs, ASC had only negotiated a downward adjustment of \$55 million.
- The type of services provided by RCI may be inherently governmental and potentially violate DFARS 237.102 and DoD Directive 4205.2 (enclosure 2.1.9). Use of a contractor to perform cost analysis services deviates from the norm. In most cases, a Government price analyst performs these services.
- The LOGCAP III contract file did not contain any final report issued by RCI as the contract terms required. Without a final report, the Army has no detailed written record of the services provided.

In June and July 2009, we requested the Army to provide documentation addressing these concerns. We had not received all of the requested documentation upon completion of our fieldwork. We will review the requested documentation in our ongoing audit of contracting officer actions on incurred cost audits of contractors involved in Iraq reconstruction activities.

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## Appendix A. Scope and Methodology

As requested by the Senate Armed Service Committee, we reviewed the Army's decision not to withhold funds on undefinitized task orders under the LOGCAP III contract. The primary objectives of our review were to determine if:

- Army contracting officials were directed by their chain of command to reverse their decision in August 2004 to withhold funds on LOGCAP III as FAR clause 52.216-26 required;
- Army officials discussed the issue of withholding funds and whether those discussions influenced the Army not to withhold funds;
- the Army's decision not to withhold funds was compliant with the Federal Acquisition Regulation;
- the removal of contracting officials from the LOGCAP III program was the result of their efforts to withhold funds on the LOGCAP III contract; and
- Army officials interviewed by the Senate Armed Services Committee staff were truthful in describing the events surrounding the decision not to withhold funds on LOGCAP III contract.

We also performed a preliminary review of the Army's use of Resource Consultants, Inc., which provided cost analysis services in connection with the negotiation of several LOGCAP III task orders. Based on the preliminary review, we initiated a full review and we will provide the results in a separate report.

To accomplish our review objectives, we:

- researched and applied applicable regulations (including the FAR, DFARS, and Army DFARS), DoD Directives and Instructions, and Army policies and procedures;
- obtained and analyzed sworn and recorded testimony from current and former DoD officials, including:
  - 27 current and former Army Sustainment Command officials stationed at the Rock Island Arsenal, Illinois;
  - the Executive Director, Army Contracting Command, Army Materiel Command Headquarters;
  - a former Director of Defense Procurement and Acquisition Policy;
  - a former Deputy Assistant Secretary of the Army for Policy and Procurement;

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- a former Assistant Secretary of the Army for Acquisition, Logistics and Technology; and
  - the Director, Central Region Director, and prior Houston Branch Office manager of the Defense Contract Audit Agency.
  - obtained and reviewed Army Sustainment Command contract files, such as memorandums, e-mail communications, legal opinions, spreadsheets, and notes;
  - reviewed the findings and supporting documentation of two related Department of the Army Inspector General investigations; and
  - analyzed interview notes provided by the Senate Armed Services Committee.

We performed our review from January 29, 2009 through November 24, 2009.

**Use of Computer-Processed Data.** We did not rely on any computer-processed data as part of our review.

**Prior Coverage.** In the last 5 years, the DoD IG Office of Audit Policy and Oversight has issued one other report involving the Army's LOGCAP III contract. In Report No. D-2009-6-004, we reported on Defense Contract Management Agency's actions on audits of cost accounting standards and internal control systems at DoD contractors involved in Iraq reconstruction activities.

# APPENDIX B: Senate Armed Services Committee Request

CARL LEVINE, CHIEF DELEGATE CHAIRMAN  
EDWARD J. MARKEY, MASSACHUSETTS  
JOSEPH C. DUNCAN, SOUTH CAROLINA  
JOSEPH I. LIEBERMAN, CONNECTICUT  
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RICHARD D. ORRISON, STAFF CHIEF  
MICHAEL NUGENT, VICE CHAIRMAN, REPUBLICAN STATE DIRECTOR

United States Senate  
COMMITTEE ON ARMED SERVICES  
WASHINGTON, DC 20510-6060

December 12, 2008

Mr. Gordon S. Heddell  
Acting Inspector General  
Department of Defense  
400 Army-Navy Drive  
Arlington, Virginia 22202-4704

Dear Mr. Heddell:

On June 17, 2008, the *New York Times* reported that Charles Smith, the senior civilian responsible for overseeing KBR's LOGCAP contract in 2003 and 2004, was forced out of his job after he threatened KBR with contract penalties for the company's continuing failure to produce data and records needed to substantiate contract costs.

We are writing to request a full review of these events by your office. In particular, we ask that you determine:

- Whether Army contracting officials responsible for the LOGCAP contract in August 2004 were directed by their chain of command to reverse a decision to withhold funds from KBR because of that company's failure to provide data needed to substantiate contract costs;
- Whether anybody in the chain of command discussed this issue with KBR officials in August 2004, and whether any such discussions influenced the Army's position on withholding funds from KBR;
- Whether the Army's decision not to withhold funds from KBR in August 2004 was consistent with the requirements of the Federal Acquisition Regulation;
- Whether the removal of Army contracting officials responsible for the LOGCAP contract in August 2004 was the result of their effort to withhold funds from KBR; and

- Whether Army officials interviewed by the Committees staff over the last several months have been truthful in their description of these events.

The *New York Times* article, a copy of which is attached, described the key events as follows:

"Mr. Smith . . . told KBR that, until the information was received, he would withhold 15 percent of all payments on its future work in Iraq. 'KBR really did not like that, and they told me they were going to fight it,' Mr. Smith recalled. In August 2004, he told one of his deputies, Mary Beth Watkins, to hand deliver a letter about the threatened penalties to a KBR official visiting Rock Island. That official, whose name Mr. Smith said he could not recall, responded by saying, 'This is going to get turned around,' Mr. Smith said. Two officials familiar with the episode confirmed that account, but would speak only on the condition of anonymity out of concern for their jobs.

"The next morning, Mr. Smith said he got a call from Brig. Gen. Jerome Johnson, who succeeded General McManus when he retired the month before. 'He told me, "You've got to pull back that letter,'" Mr. Smith recalled. General Johnson declined to comment for this article. A day later, Mr. Smith discovered that he had been replaced when he went to a meeting with KBR officials and found a colleague there in his place. Mr. Smith was moved into a job planning for future contracts with Iraq. Ms. Watkins, who also declined to comment, was reassigned as well."

Mr. Smith testified before the Senate Democratic Policy Committee on July 9, 2008, and reaffirmed this version of events. A copy of Mr. Smith's prepared statement from that hearing is attached.

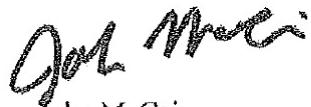
Over the last several months, the Armed Services Committee staff has interviewed a number of current and former Department of Defense officials who participated in these events. The contracting officer, Ms. Watkins, largely confirmed Mr. Smith's allegations. Ms. Watkins indicated that she had contemporaneous notes and other documentation of specific conversations that she related to the Committee staff and named other Army officials who would be in a position to corroborate these conversations. Officials of the Defense Contract Audit Agency also provided an account that supported this version of events.

However, several more senior Army officials interviewed by the Committee staff either stated that they did not remember these events or told the staff that these events did not happen. This leaves open the question whether Army officials in fact reversed their position on this issue as a result of pressure from KBR, and whether these officials were truthful with the Committee staff. We ask that you review and resolve these issues.

It is our intention to seek a resolution of the Senate authorizing the Committee to release to your office typed summaries of the interviews conducted by our staff to assist you in conducting this review.

Thank you for your assistance in this matter.

Sincerely,



John McCain  
Ranking Member



Carl Levin  
Chairman

Enclosures

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# Headquarters, U.S. Army Materiel Command Comments



REPLY TO  
ATTENTION OF:

AMCIR

DEPARTMENT OF THE ARMY  
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND  
9301 CHAPEK ROAD  
FORT BELVOIR, VA 22060-5527

31 OCT 2009

MEMORANDUM FOR Inspector General, Department of Defense, ATTN: Mr. Charles W. Beardall, 400 Army Navy Drive, Arlington, VA 22202-4704

SUBJECT: DODIG Draft Report, Review of Army Decision Not to Withhold Funds on the Logistics Civil Augmentation Program III Contract (D2009-DIP0AJ-0141.000) (D0927)

1. The U.S. Army Materiel Command (AMC) has reviewed the subject draft report and provides the enclosed comments for your consideration.
2. The AMC agrees with four of the five recommendations related to improvements in quality assurance procedures in the areas of including sufficient information in Federal Acquisition Regulation deviation requests, contingency plans and proper use of undefinitized contract actions. However, AMC has concerns regarding the DODIG cited factual information and conclusions in the draft report for three of the five questions included as part of the Senate Armed Service Committee's original audit request. Conclusions were made before interviewing the senior decision maker within the Army regarding the withhold issue, the Assistant Secretary of the Army for Acquisition, Logistics and Technology. In addition, the report omits pertinent information that supports the Command's rationale for making decisions the DODIG deemed inappropriate. Specific comments are enclosed.
3. The AMC point of contact is Ms. Susan McCoy, (703) 806-9138, or email: susan.mccoy@us.army.mil.

Encl

TERESA W. GERTON  
Acting Executive Deputy  
to the Commanding General

Printed on Recycled Paper

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**DODIG DRAFT REPORT DATED OCTOBER 06, 2009**  
**D2009-DIP0AI-0141.000**

**Review of Army Decision Not to Withhold Funds on the Logistics Augmentation  
Program III Contract**

**U.S. ARMY MATERIEL COMMAND COMMENTS  
TO THE DODIG DRAFT REPORT**

**Summary of Finding:** Two Commanding Generals of the Army Sustainment Command directed a contracting officer to postpone the withholding of funds on the LOGCAP III contract in noncompliance with the Federal Acquisition Regulation. The decision to postpone the withholding of funds was influenced by contractor claims that the withholding might adversely impact their ability to provide vital support services to the troops. The Army Sustainment Command request for a deviation from the Federal Acquisition Regulation did not include all relevant facts necessary for the approving official to make any informed decision. While the timing of two employees reassessments raised the possibility that they could have been related to the individuals' efforts with regard to the 15 percent withhold issue, we did not find sufficient evidence to substantiate that the efforts of the two contracting officials to implement the FAR clause was the basis for their removal from the LOGCAP III contract. We also did not find sufficient evidence to substantiate that any of the Army officials who spoke to the Senate Armed Services Committee staff were untruthful in describing the events in question.

**Summary of Objective:** Review the Army's decision not to withhold funds on undefinitized task orders under the Logistics Civil Augmentation Program (LOGCAP) III contract, as Federal Acquisition Regulation (FAR) clause 52.216-26 requires. The review focused on the following five questions: 1) Were Army contracting officials responsible for the LOGCAP contract in August 2004 directed by their chain of command to reverse a decision to withhold funds from a DoD contractor because the contractor failed to provide data needed to substantiate contract cost? 2) Did anyone in the Army chain of command discuss the withhold issue with contractor officials in August 2004, and did any such discussions influence the Army's position on withholding funds from the contractor? 3) Was the Army's decision not to withhold funds from the contractor in August 2004 consistent with the requirement of the FAR? 4) Was the removal of the Army contractor officials responsible for the LOGCAP contract in August 2004 the result of the contracting officials' efforts to withhold funds from the contractor? 5) Were Army officials that the Senate Armed Services Committee staff interviewed truthful in their descriptions of these events?

**AMC ADDITIONAL FACTS:**

**General Comments to the Findings and Recommendations:** Specific comments will be made to each Finding and Recommendation as requested; however, the report and its Findings and Recommendations are based on an incomplete record. In accordance with Title 41 United States Code §414, and the Army Federal Acquisition Regulations Supplement (AFARS) 5101.602-1-90 and Appendix CC- 301 (cited in their entirety below), the senior decision maker within the

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Army regarding the withhold was the Honorable Claude Bolton, the Assistant Secretary of the Army for Acquisition, Logistics and Technology (ASA (ALT)). As the Army Acquisition Executive and its Senior Procurement Executive, Mr. Bolton was personally and substantially involved in the decisions regarding the implementation of FAR 52.216-26 and the submission of the waiver to Department of Defense. In the 23 October 2009 outbrief, the DoD IG indicated that an interview with Mr. Bolton was not necessary to develop a complete record as he was not a decision maker in this matter. The AMC strongly disagrees and recommends that the DoD IG interview Mr. Bolton to obtain his comments and his perspective.

**5101.602-1-90 -- Departmental review and approval.**

At any time during the procurement process, the Deputy Assistant Secretary of the Army for Procurement (DASA(P)), or designees, may direct the responsible PARC or source selection authority (SSA) to submit a proposed contractual action to the Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology) for review, notation, and/or approval. The PARC or SSA shall provide any information, documents, and briefings requested, and shall ensure that no final action is taken on the proposed contractual action during the pendency of the DASA (P) review. In accordance with FAR 3.104-4(a), personnel within the Office of the DASA (P) and the Office of the General Counsel are authorized to receive full access to contractor bid or proposal information and source selection information in connection with such reviews. The DASA (P) may designate other authorized recipients on a case-by-case basis (see 5103.104-4(a)).

*[AFARS Revision #008, dated February 3, 2004]*

**CC-301 -- Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA (ALT)).**

The ASA (ALT) is the Army Acquisition Executive (AAE) and the Senior Procurement Executive (SPE) for the Army, and is responsible for all procurement and contracting functions of the Army to include agency head authority for contracting matters; delegation of contracting authority; designation of contracting activities; promulgating Army contracting policies and procedures (Army Federal Acquisition Regulation Supplement (AFARS)); and procurement management review program activities. This includes initial development, implementation and promulgation of acquisition, procurement and contracting policies, procedures, and good business practices. The ASA (ALT) is responsible for funding and staffing the PMR Program.

**Finding A. Question 1:** *Were Army contracting officials responsible for the LOGCAP contract in August 2004 directed by their chain of command to reverse a decision to withhold funds from the contractor because the contractor failed to provide data needed to substantiate contract costs?*

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*Yes. A preponderance of evidence indicates that the ASC Commanding General directed the LOGCAP III contracting officer to postpone her decision to implement the 15 percent withhold. The ASC Commanding General did not have the authority to postpone the withholding of funds because the FAR mandates it on undefinitized contract actions, absent an approved FAR deviation. The prior ASC Commanding General who retired in June 2004 also did not have the authority to grant earlier postponements to enforcing the clause.*

**AMC's Response:** Non-concur.

AFARS 5101.43 authorizes the Principal Assistant Responsible for Contracting (and, therefore, the Head of the Contracting Activity) to grant individual deviations to the FAR. The HCA's decision in March, 2004 to postpone the withholding of funds, and the continuation of this decision by the new ASC Commander, was consistent with this authority. The subsequent request by the CG, ASC to the Deputy Assistant Secretary of the Army (Policy and Procurement) for a class deviation to withhold funds (Attachment # 10) could also be viewed as an implicit grant of an individual deviation by the CG, ASC. The DPAP's letter dated February 2, 2005 further demonstrates the proper exercise of the HCA's authority (Attachment # 8). The following documents are relevant to the HCA's exercise of authority under AFARS 5101.43:

13 February 2004	PCO requests LOGCAP III contractor interpretation of FAR Clause 52.216-26 (per DCAA letter 13 February 2004). (Attachments 1)
2 March 2004	LOGCAP III contractor argues that FAR clause 52.216-26 does not apply to undefinitized contract actions (UCAs) under LOGCAP III contract. (Attachment 2)
12 March 2004	PCO issues decision that 52.216-26 applies to UCAs. Implementation of withhold to begin 31 March 2004. (Attachment 3)
16 March 2004	Head of Contracting Activity and Army Field Support Command Commander (MG McManus) emails LOGCAP III contractor to notify it of his intent to defer implementation of FAR 52.216-26 for sixty days. (Attachment 4)
18 March 2004	PCO postpones implementation for initial period of thirty days due to necessity to re-price all LOGCAP III task orders to address the \$6B limit placed on LOGCAP for FY04. (Attachment 5)
29 April 2004	PCO considers deviation to FAR clause. (Attachment 6)
15 June 2004	PCO extends delay of implementation of FAR 52.216-26. (Attachment 7)

The following FAR and AFARS provisions applicable at the time provided the authority for the HCA and the PARC at ASC to grant a deviation:

**FAR 1.403 Individual deviations.**

Individual deviations affect only one contract action, and, unless 1.405(e) is applicable, may be authorized by the agency head. The contracting officer must document the justification and agency approval in the contract file.

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**AFARS 5101.403 – Individual Deviations**

- (1) Only PARCs may approve individual deviations to FAR, DFARS, and AFARS. This authority does not extend to areas set forth in DFARS 201.402; to any provisions which limit approval authority to a level higher than a HCA; (sic) and to any provisions based upon statute or Executive Order unless such authority provides for waiver.
- (2) ...
- (3) ...

**Finding A. Question 2:** *Did anybody in the chain of command discuss the withhold issue with contractor officials in August 2004, and did any such discussions influence the Army's position on withholding funds from the contractor?*

*Yes. Throughout 2004, contractor representatives discussed the withhold issue with senior officials at ASC and the Army Materiel Command. The contractor's claim that the withholding of funds might impact vital support services to the troops influenced the Army's position not to implement the 15 percent withhold. Taking into account the contractor's claim and ASC's lack of an alternative plan for obtaining the services from other sources, the ASC Commanding General felt that enforcing the clause could jeopardize battlefield operations. ASC had thus failed to comply with DoD Instruction 3020.37 by not maintaining a contingency plan for continuing essential LOGCAP III services in the event the contractor did not fulfill its contractual obligations. ASC has since changed its acquisition strategy on LOGCAP IV to avoid the reliance on one contractor and to help ensure that enforcement of contract clauses is not jeopardized.*

**AMC's Response:** Non-concur.

The core of this finding is the perceived failure of ASC to develop a contingency plan in accordance with DoD Instruction 3020.37. What the review fails to identify is that the LOGCAP III contract was awarded under the Logistics Civil Augmentation Program to "augment" the primary means of providing logistics support to deployed forces. Further, the contract implements this DoD Instruction such that, even in the event of a major dispute, the PCO possesses the legal authority to require continued performance. The review also fails to recognize that LOGCAP III is the contingency contract for use by the Army during times of crisis to ensure continuation of essential services in accordance with DoD Instruction 3020.37.

**Finding A. Question 3:** *Was the Army's decision not to withhold funds from the contractor in August 2004 consistent with the requirements of the Federal Acquisition Regulation?*

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*No. The ASC Commanding General's decision to postpone the withholding of funds in August 2004 was inconsistent with the FAR. The ASC Commanding General did not have legal authority to postpone enforcement of the FAR clause prior to receiving the approved FAR deviation in February 2005. In addition, the failure to enforce the clause from inception of the contract in December 2001 (nearly 3 years) represents a significant internal control weakness that put the Government at significant risk for overpayment. We also determined the Army's request for deviation omitted relevant facts about the financial impact on the contractor. In addition, the Army could not support the statement in the deviation request that it had examined available alternatives. These discrepancies could have affected the decision to approve the deviation.*

**AMC's response:** Non-concur.

The original decision to postpone the withholding of funds occurred in March 2004 and was approved by the HCA, the PCO and the PARC.

The assertion that ASC did not provide adequate information to decision-makers at AMC, DA or at the DoD level is factually wrong. As early as March 2004 (Attachment 9), the then HCA indicates that implementation of the withholding would have a significant effect on the contractor being able to provide services under LOGCAP III. The deviation request dated 29 October 2004 provides an analysis by the HCA of the conditions surrounding the request for deviation. (Attachment 10) Additional records show that there was considerable discussion between DPAP representatives, the Defense Contract Audit Agency and the Director of Contracting, Army Material Command others that outlined that the consequences that might occur if the LOGCAP III contractor was unable to financially support the Army. (Attachment 11) While the documents at attachments 10 and 11 shows there was adequate information provided to support the deviation, it is suggested that Ms. Lee, as the DPAP at the time, be asked if she felt that there was adequate information developed upon which to base her decision. Alternatives such as a termination were not reasonable as there was no other contractor who could mobilize approximately 19,000 workers to support the mission on short notice while continuing to provide the essential services required for the Warfighter.

**Finding A. Question 4:** *Was the removal of Army contracting officials responsible for the LOGCAP III contract in August 2004 the result of their effort to withhold funds from the contractor?*

*No. While the timing of the reassignments raised the possibility that they could have been related to the individuals' efforts with regard to the 15 percent withhold issue, we did not find sufficient evidence to substantiate that the efforts of the Chief of Field Support Contracting and the LOGCAP III contracting officer to withhold funds were the basis for their reassignment from the LOGCAP III contract. However, ASC management did not carry out the reassignments in a professional manner.*

**AMC's Response:** Concur.

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**Finding A. 5:** Were Army officials interviewed by the Committees staff over the last several months truthful in their description of these events?

*We did not find sufficient evidence that any of the Army officials who spoke to the Senate Armed Services Committee staff were untruthful in describing the key events in question. Our review did not disclose significant discrepancies between the interview notes provided by the Senate Armed Services Committee staff and the testimony we received.*

**AMC's Response:** Concur.

#### **RECOMMENDATIONS**

##### **A. COMMANDING GENERAL, US ARMY MATERIEL COMMAND**

**RECOMMENDATION A-1:** Develop quality assurance procedures for requesting Federal Acquisition Regulation deviations to ensure that such requests comply with the applicable regulations and accurately reflect all relevant facts for consideration by the approval official.

**COMMAND COMMENTS:** Concur. The Executive Director of the US Army Contracting Command, in collaboration with ASA-ALT, will ensure that the appropriate focus is paid to adequately documenting deviation decisions in accordance with FAR, DFARS and AFARS requirements.

**RECOMMENDATION A-2:** Implement quality assurance procedures for ensuring the preparation of contingency plans for the continuation of essential DoD contractor services in accordance with DoD Instruction 3020.37.

**COMMAND COMMENTS:** Concur. Accomplished through the acquisition strategy implemented under LOGCAP IV.

**RECOMMENDATION A-3:** Consider appropriate corrective actions regarding the failure of the Army Sustainment Command to enforce Federal Acquisition Regulation clause 52.216-26 without proper authority.

**COMMAND COMMENTS:** Non-concur. Action taken was in accordance with AFARS 5101.43. See AMC's response under "Finding A. Question 1."

##### **B. COMMANDING GENERAL OF THE ARMY SUSTAINMENT COMMAND**

**RECOMMENDATION B-1:** Implement quality assurance procedures for ensuring that the Army enforces all contract clauses. As part of this effort, the Army Sustainment Command should provide training to contracting officials on the proper use of undefinitized contract actions.

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**COMMAND COMMENTS:** Concur. Training is currently incorporated into ongoing acquisition training and emphasized as part of the PCO development and training process.

**RECOMMENDATION B-2:** *Review and make appropriate changes to the policies and procedures for reassigning employees to ensure that management carries out the reassignments in a professional manner.*

**COMMAND COMMENTS:** Concur. ASC is developing an updated Supervisory Development course, which will detail appropriate reassignment procedures. Expected completion date of new training course is February 2010.



# Inspector General Department of Defense

